IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WP(C).No. 25641 of 2004(C)

IA.2647/03 IN OS.606/2003 of MUNSIFF'S COURT,KAYAMKULAM

.....

PETITIONER:

RECOVERY OFFICER, EMPLOYEES'
PROVIDENT FUND, REGIONAL OFFICE,
36/685A, BHAVISHYA NIDHI BHAVAN.

BY ADV. SRI.S.GOPAKUMARAN NAIR, SC, P.F.

RESPONDENTS:

SARAMMA CHERIYAN,
KIZHAKKEDATH VEEDU, KAYAMKULAM MURI,
KAYAMKULAM VILLAGE.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.25641/04

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF ORDER DT.13.11.02 BY REGIONAL PROVIDENT FUND COMMR.

EXT.P2 – TRUE COPY OF NOTICE DT.10.11.03 ISSUED BY PETR.

EXT.P3 - TRUE COPY OF PLAINT FILED BY RESPONDENT.

EXT.P4 – TRUE COPY OF IA. SEEKING TEMPORARY INJUNCTION FILED BY RESPONDENT.

EXT.P5 – TRUE COPY OF AFFIDAVIT FILED BY PETR. IN I.A. BEFORE MUNSIFF.

EXT.P5(A) – TRUE COPY OF OBJECTION FILED BY PETR. IN THE I.A. BEFORE MUNSIFF.

EXT.P6 – TRUE COPY OF ORDER PASSED BY MUNSIFF'S COURT UNDER ORDER 39, RULE 1 AND 2 AND SEC.151 CPC.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

.....

W.P.(C)No.25641 OF 2004

.....

DATED THIS THE 8th AUGUST, 2007

J U D G M E N T

Ext.P6 order of injunction issued by the Munsiff, Kayamkulam restraining the petitioner-Recovery Officer, Employees Provident Fund from initiating revenue recovery proceedings against the respondent for recovery of the amounts due under an order passed under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act') is under challenge in this Writ Petition under Article 227 initiated by the petitioner who was the counter-petitioner in the injunction application.

2. The maintainability of this Writ Petition on the ground that an alternative remedy exists under the Code of Civil Procedure was in fact considered by this Court on 21.8.2004 and this Court took the view that since the very jurisdiction of the civil court to entertain the suit is under challenge, the issue can be examined under the present jurisdiction.

3. Heard the learned counsel for the petitioner. The counsel would draw my attention to Sections 7-I and 14B of the Act and also to Section 18 which almost completely bars suits like the present one, provided the impugned action is taken in good faith or intended to be

done in pursuance to the Act. Revenue recovery proceedings have obviously been initiated in pursuance to an order under Section 14B of the Act and therefore the same is covered by Section 18, so submits the learned counsel.

4. On going through Ext.P6, what I notice is that the learned Munsiff was disturbed by the situation that revenue recovery proceedings are initiated simultaneously against the respondent and one Jitra for recovery of the very same amount. This circumstance, according to the learned Munsiff, will show that the action of the petitioner is per se fraudulent. The learned counsel for the petitioner would submit that Jitra is none other than the son of the respondent and the establishment in question, M/s.Hobby Theatre, Kayamkulam is conducted by the mother and the son jointly. The names of the mother and son are shown in the ownership certificate which was supplied as per the provisions of the Act as owners-cum-employers of the covered establishment. Therefore, initiation of revenue recovery proceedings simultaneously against the mother and the son could not have been branded as fraudulent. Counsel also submitted that at any rate the order under Section 14B having attained finality, it is not open either to the respondent or Jitra, her son who is hands in glove with

the mother to contend that revenue recovery proceedings are fraudulent.

5. Section 7-I of the Act provides for an appeal by the aggrieved person against orders under Section 14B to the Tribunal, viz., the Employees Provident Fund Appellate Tribunal constituted under Section 7D. I am of the opinion that in view of the discernible position that the respondent is a party to the order under Section 14B of the Act, she should have availed the appellate remedies provided under Section 7-I. The maintainability of the suit is very much in doubt and it is first principle that in a suit which is not maintainable, the court will not be justified in granting interim reliefs.

6. I set aside Ext.P6 order and direct the court below to take a decision on the maintainability of the suit, after hearing both sides. The implications of Section 7-I and Section 18 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 will be kept in mind by the learned Munsiff while taking decision as directed above. In the meanwhile, the respondent is permitted to prefer appeal, if so advised, against the order under Section 14B to the Tribunal. If the Tribunal receives an appeal from the respondent within one month from today, the Tribunal will exclude the time during which the

application for injunction was pending before the Munsiff's Court, the time during which this Writ Petition was pending before this Court and a further period of one month from today from the reckoning for the purpose of Section 14 of the Limitation Act.

The Writ Petition is allowed as above. No costs.

(PIUS C.KURIAKOSE, JUDGE)

tgl